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Edited version of private advice

Authorisation Number: 1052273158502

Date of advice: 5 August 2024

Ruling

Subject: Superannuation death benefit

Question 1

Will the payment of a superannuation death benefit of the Deceased to the Trustee of their spouse's Deceased Estate be treated as being paid to a death benefits dependant under subsection 302-10(2) of the *Income Tax Assessment Act 1997* (ITAA 1997)?

Answer

No.

This ruling applies for the following period:

Year ending 30 June 2024

The scheme commenced on:

1 July 2023

Relevant facts and circumstances:

The Deceased passed away in June 20XX.

The Deceased was a member of a complying superannuation fund (the Fund).

The Deceased had a spouse at the time of passing.

The spouse was the sole beneficiary of the Deceased's Estate.

In February 20XX, the spouse passed away.

The Deceased's superannuation policy had not been paid to the spouse before the spouse passed away.

The Fund required the executor of the spouse's estate to apply for a grant of probate for the Deceased's Estate before they would release the Deceased's funds.

The executor of the spouse's Estate applied for the grant of probate and the balance of the superannuation policy with the Fund for the Deceased was paid to the Deceased's Estate in February 20XX.

The balance of the superannuation policy is to be paid to the spouse's estate.

The Deceased's spouse's final beneficiaries are not death benefit dependants of the Deceased.

Relevant legislative provisions:

Income Tax Assessment Act 1997 Section 302-10(1)

Income Tax Assessment Act 1997 Subsection 302-10(2)

Income Tax Assessment Act 1997 Section 302-10(3)

Income Tax Assessment Act 1997 Section 302-195

Income Tax Assessment Act 1997 Subsection 302-195(1)

Income Tax Assessment Act 1997 subsection 307-5(1)

Income Tax Assessment Act 1997 Section 995-1

Income Tax Assessment Act 1997 Subsection 995-1(1)

Reasons for decision:

Meaning of death benefits dependant

Division 302 of the ITAA 1997 sets out the taxation arrangements that apply to the payment of superannuation death benefits. These arrangements depend on whether the person that receives the superannuation death benefit is a dependant of the deceased and whether the amount is paid as a lump sum superannuation death benefit or a superannuation income stream death benefit.

A superannuation death benefit is defined in section 307-5(1) of the ITAA 1997 as:

A payment to you from a superannuation fund, after another person's death, because the other person was a fund member.

Subsection 995-1(1) of the ITAA 1997 states that the term 'death benefits dependant' has the meaning given by section 302-195 of the ITAA 1997. Subsection 302-195(1) of the ITAA 1997 defines a death benefits dependant as follows:

A **death benefits dependant**, of a person who has died, is

- a. the deceased person's spouse or former spouse; or
- b. the deceased person's child, aged less than 18; or
- c. any other person with whom the deceased person had an interdependency relationship under section 302-200 just before he or she died; or
- d. any other person who was a dependant of the deceased person just before he or she died.

The Deceased's spouse was a death benefits dependant under paragraph 302-195(1)(a) of the ITAA 1997 at the time of the Deceased's death.

Tax benefit where superannuation death benefit paid to trustee of deceased estate

The superannuation death benefit was paid to the Trustee of the Deceased Estate.

The tax treatment of superannuation death benefit payments in the hands of the trustee of a deceased estate is outlined in 302-10 of the ITAA 1997:

(2) To the extent that 1 or more beneficiaries of the estate who were death benefits dependants of the deceased have benefited, or may be expected to benefit, from the superannuation death benefit:

(a) the benefit is treated as if it had been paid to you as a person who was a death benefits dependant of the deceased; and

(b) the benefit is taken to be income to which no beneficiary is presently entitled.

(3) To the extent that 1 or more beneficiaries of the estate who were not death benefits dependants of the deceased have benefited, or may be expected to benefit, from the superannuation death benefit:

(a) the benefit is treated as if it had been paid to you as a person who was not a death benefits dependant of the deceased; and

(b) the benefit is taken to be income to which no beneficiary is presently entitled.

Although the Deceased's Spouse was a death benefits dependant, the concessional tax treatment afforded by subsection 302-10(2) of the ITAA 1997 is reliant upon the superannuation death benefit being received or expected to be received by a death benefit dependant.

Ordinarily, the requirement to ascertain whether a death benefit dependant may be expected to benefit from a superannuation death benefit arises when the trustee of the estate is required to lodge an income tax return for the estate after the superannuation benefit has been received by the estate but before the assets can be distributed to the beneficiaries. The provision allows the trustee to make a determination that the death benefit will be tax free to the extent that a death benefit beneficiary will receive it once the estate assets can be distributed.

Subsection 302-10(2) of the ITAA 1997 refers to death benefit dependants who 'have benefited, or may be expected to benefit, from the superannuation death benefit'. The use of the phrase 'may be expected to benefit' connotes something that is less than absolute certainty. The death benefit dependant in question does not have to have already benefited from the death benefit, it is enough that they can reasonably be expected to benefit.

However, for subsection 302-10(2) of the ITAA 1997, to apply, there needs to be a reasonable expectation that the superannuation death benefit will be received by a death benefits dependant.

Additionally, although death benefits dependency is assessed at the time of the deceased's death, this is not necessarily applicable to the determination of who has benefited or is expected to benefit from a superannuation death benefit.

In this case, it would be reasonable to conclude that the Deceased's spouse has not benefited, nor can they be expected to benefit, from the superannuation death benefit of the Deceased, as the spouse passed away before it was paid.